Zoning Adjustments Board
Thursday, February 28, 2013- 7:00 PM

City Council Chambers, 2134 Martin Luther King Jr. Way, Second Floor
Berkeley, CA 94704 (Wheelchair Accessible)

How to Contact Us: Land Use Planning Division (Attn: Terry Blount, AICP, ZAB Secretary), 2120 Milvia Street, Berkeley, CA 94704; (510) 981-7410; zab@ci.berkeley.ca.us

Roll Call: 7:00 PM

Present:
Deborah Matthews (Vice-Chairperson), appointed by Mayor Bates
George Williams, appointed by Councilmember Capitelli
Robert Allen, appointed by Councilmember Wengraf
Sophie Hahn, appointed by Councilmember Worthington
Steven Donaldson, appointed by Councilmember Moore
Elisa Mikiten, appointed by Councilmember Maio
Igor Tregub, appointed by Councilmember Arreguin

Absent:
Toya Groves, appointed by Councilmember Anderson

Excused:
Michael Alvarez Cohen (Chairperson), appointed by Councilmember Wozniak

Members of the Public
Present: 36
Speakers: 20

Ex Parte Communication Disclosures
In the context of adjudicative matters that come before the ZAB, ex parte communications are those which occur outside the formal hearing process. ZAB members should avoid ex-parte contacts on matters pending before the ZAB as much as possible, as they may represent, or be perceived to represent, the receipt of evidence that can unfairly influence a Board member’s decision on a matter before the Board. If such contacts do occur, they must be placed in the record and disclosed to all interested parties sufficiently in advance of the decision to allow rebuttal.

- G. Williams – Spoke with both parties from 457 Kentucky Ave.
S. Hahn – Visited all sites and spoke with owners, applicants and appellants regarding 457 Kentucky Ave. Spoke with board member R. Allen regarding 2024 Durant Avenue Design Review.

E. Mikiten – Spoke with Stephen Stine regarding administrative process on 2024 Durant Ave.

I. Tregub – Spoke with Stephen Stine, Catherine Stine and Nathan George regarding 2024 Durant Ave. Also spoke with Ms. Rickles regarding 457 Kentucky Ave.

Public Comment
Each Speaker is limited to a maximum of three minutes.

- None

Agenda Changes
The Board Chairperson may reorder the agenda at the beginning of the meeting.

- Moved agenda item #2 after agenda items #3, #4 and #5.
- Items #3 and #5 placed on Consent Calendar.

Consent Calendar:
The Consent Calendar allows the Board to take action with no discussion, on projects to which no one objects. The Agenda includes three types of Consent Calendar items: (1) Approval of previous meeting minutes; (2) Modifications of existing Use Permits (which have not been noticed for public hearings); (3) Items being continued to another meeting (Board action has been postponed to another meeting). The Board Chairperson will announce items for the Consent Calendar at 7:05 pm. The Board may place additional Agenda items on the Consent Calendar, if no one present wishes to testify on an item. Anyone present who wishes to speak on an item should raise his or her hand and advise the Chairperson, and the item will be pulled from the consent calendar. Modification Projects may be discussed by the Board at this meeting or set for a public hearing at a later meeting. Items already noticed for a public hearing will be heard following Continued Items, or, if necessary, posted for a public hearing at a subsequent meeting.

<table>
<thead>
<tr>
<th>1. Approval of Previous Meeting Minutes</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Minutes from the 2/14/13 meeting</td>
<td></td>
</tr>
<tr>
<td>Recommendation: APPROVE</td>
<td></td>
</tr>
<tr>
<td>Action: APPROVED</td>
<td></td>
</tr>
<tr>
<td>Motion / Second: R. Allen / I. Tregub</td>
<td></td>
</tr>
<tr>
<td>VOTE: 7-0-0-2 (Absent: M. Cohen, T. Groves)</td>
<td></td>
</tr>
</tbody>
</table>
Continued Public Hearing:

<table>
<thead>
<tr>
<th>2.</th>
<th>2024 Durant Avenue</th>
</tr>
</thead>
</table>
| Use Permit #12-10000017 to demolish a church and construct an eight-story, 96-unit, apartment building with a mix of one, two, and three bedroom units and basement level parking with 36 parking spaces. | **Recommendation:** APPROVE Use Permit #12-10000017 subject to the Findings and Conditions.  
**Action:** CONTINUED to 3/14/13 meeting.  
**Motion / Second:** E. Mikiten / I. Tregub  
**Number of Speakers:** 17  
**Vote:** 7-0-0-2 (Absent: M. Cohen, T. Groves) |

Property Owner (2024 Durant): Presbytery of San Francisco, 2024 Durant Ave., Berkeley, CA 94704  
Property Owner (2025 Channing): Tu Casa Properties, Inc., 2140 Santa Cruz Ave., B204, Menlo Park, CA 94025  
**Zoning:** C-DMU, “Downtown Mixed-Use District Buffer”; **Planner:** Leslie Mendez

New Hearings:

<table>
<thead>
<tr>
<th>3.</th>
<th>1763 Alcatraz Avenue</th>
</tr>
</thead>
</table>
| Use Permit #12-10000054 to establish an approximately 600 square foot beer and wine bar with incidental on-site brewing. | **Recommendation:** APPROVE Use Permit #12-10000054 subject to the Findings and Conditions.  
**Action:** APPROVED on consent.  
**Motion / Second:** G. Williams / S. Hahn  
**Vote:** 7-0-0-2 (Absent: M. Cohen, T. Groves) |

Applicant / Property Owner: Viet Vu, 1209 Oak St., Apt. 2, San Francisco, CA  
**Zoning:** C-SA, “South Area Commercial District”; **Planner:** Claudine Asbagh

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Continued From:</strong></td>
<td>1/24/2013</td>
</tr>
<tr>
<td><strong>Continued From:</strong></td>
<td>None</td>
</tr>
<tr>
<td><strong>Continued From:</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Number of Speakers:** 17  
**Vote:** 7-0-0-2 (Absent: M. Cohen, T. Groves)
### 4. 1911 Ninth Street

**Use Permit #12-10000060** to demolish an existing two-story 1,756 sq. ft. single-family home and to construct three, three-story, single-family homes, totaling 6,182 sq. ft. of total floor area on a 6,505 sq. ft. lot.  
**Applicant / Property Owner:** John Newton, 5666 Telegraph Ave., Oakland CA. 94609  
**Zoning:** R-3, “Multiple-Family Residential District”; **Planner:** Nathan Dahl

<table>
<thead>
<tr>
<th>Continued From:</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>APPROVE Use Permit #12-10000060 subject to the Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED Use Permit #12-10000060 subject to the Findings and Conditions.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>R. Allen / S. Donaldson</td>
</tr>
<tr>
<td><strong>Number of Speakers:</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>7-0-0-2 (Absent: M. Cohen, T. Groves)</td>
</tr>
</tbody>
</table>

### 5. 457 Kentucky Avenue

**Appeal** of **Administrative Use Permit #10-20000126** that allowed a fence and a hedge to exceed the six-foot height limit along the rear property line.  
**Applicant / Property Owner:** Richard Ruggieri / Edith Lavin, 457 Kentucky Ave., Berkeley, CA 94707  
**Appellant:** Bruce and Judith Moorad, 460 Vassar Ave., Berkeley, CA 94708  
**Zoning:** R-1(H), “Single-Family Residential, Hillside Overlay”; **Planner:** Greg Powell

<table>
<thead>
<tr>
<th>Continued From:</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommendation:</strong></td>
<td>AFFIRM the Zoning Officer’s approval of Administrative Use Permit #10-20000126 subject to the Findings and Conditions and DISMISS the appeal.</td>
</tr>
<tr>
<td><strong>Action:</strong></td>
<td>APPROVED on consent.</td>
</tr>
<tr>
<td><strong>Motion / Second:</strong></td>
<td>G. Williams / S. Hahn</td>
</tr>
<tr>
<td><strong>Vote:</strong></td>
<td>7-0-0-2 (Absent: M. Cohen, T. Groves)</td>
</tr>
</tbody>
</table>

**Additional Agenda Items:**  
The following agenda items may be discussed, but no action may be taken unless a specific item is listed on this agenda.

- Information/Communication
- Discussion Item
  - **State Density Bonus Law Presentation**
- Business Meeting
- Chairperson’s Report
- Current Business/Committee Appointment
- Future Agenda Items
- Other Matters
Future Council Hearings on ZAB Decisions

i. 1861 Solano Avenue, 3/5/2013
ii. 245 Tunnel Road, 3/19/1300
iii. 1214 Glen Avenue, 3/26/2013
iv. 1488 Keoncrest Drive, 3/26/2013
v. 2133 University Avenue (Acheson Commons), 3/26/2013
vi. 1152 Amador Avenue, 5/7/2013
vii. 2401 Telegraph Avenue, 5/21/2013

Adjourn: 10:10 PM
Correspondence and Notice of Decision Requests

- Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note:** e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.

- **To distribute correspondence to Board members prior to the meeting date** -- submit comments by **12:00 noon, seven (7) days before the meeting.** Please provide 15 copies of any correspondence with more than ten (10) pages or if in color or photographic format.
- Correspondence received by 4:00 pm the Tuesday before the meeting will be posted on the ZAB web site for review by the Board and public prior to the meeting. Correspondence received later, and after the meeting, will be posted to the web site following the meeting.
- Any correspondence received after this deadline will be given to Board members on the meeting date just prior to the meeting.
- Staff will not deliver to Board members any additional written (or e-mail) materials received after 12:00 noon on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the Zoning Adjustments Board Clerk just before or at the beginning of the meeting.
- Written comments, or a request for a Notice of Decision should be directed to the ZAB Secretary at: Land Use Planning Division (Attn: Terry Blount, AICP, ZAB Secretary), 2120 Milvia Street, Berkeley, CA 94704 OR at zab@ci.berkeley.ca.us

Accessibility Information / ADA Disclaimer
This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Permit Service Center, Planning and Development Department located at 2120 Milvia Street, Berkeley, during regular business hours.

Notice Concerning Your Legal Rights
If you object to a decision by the Zoning Adjustments Board regarding a land use permit project, the following requirements and restrictions apply:
1. If you challenge the decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Adjustments Board at, or prior to, the public hearing.

2. You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Land Use Planning Division in writing of your desire to receive a Notice of Decision when it is completed.

3. Pursuant to Code of Civil Procedure Section 1094.6(b) and Government Code Section 65009(c)(1), no lawsuit challenging a City Council decision, as defined by Code of Civil Procedure Section 1094.6(e), regarding a use permit, variance or other permit may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that ninety (90) day period will be barred.

4. Pursuant to Government Code Section 66020(d)(1), notice is hereby given to the applicant that the 90-day protest period for any fees, dedications, reservations, or other exactions included in any permit approval begins upon final action by the City, and that any challenge must be filed within this 90-day period.

5. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
   A. That this belief is a basis of your appeal.
   B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
   C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.
   If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.